



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 16 2009

REPLY TO THE ATTENTION OF: R-19J

Warren C. Swartz, Jr., President
Keweenaw Bay Indian Community
16429 Beartown Road
Baraga, Michigan 49908

Dear President Swartz:

Thank you for your letter to the U.S. Environmental Protection Agency dated August 26, 2009, regarding Keweenaw Bay Indian Community (KBIC) concerns about the proposed renovation and reuse of the Humboldt Mill Ore Processing Facility in Marquette, Michigan. In that correspondence, you requested that the EPA provide technical assistance to KBIC. By letter dated September 14, 2009, I responded that we had received your request and would be scheduling a conference call with your staff to review the KBIC concerns and discuss the potential roles and/or responsibilities of EPA for the proposed Humboldt Mill facility.

On September 21, 2009, representatives of the EPA Region 5 Air and Radiation Division, Indian Environmental Office, Office of Regional Counsel, Superfund Division, and Water Division participated in a conference call with Todd Warner and Chuck Brumleve. Mr. Warner and Mr. Brumleve outlined a number of environmental concerns related to both the current conditions at the site and to the proposed new operations. Bearing in mind that the State of Michigan is the primary regulatory agency for the proposed facility, the various EPA representatives on the conference call indicated how their respective programs might be involved. The purpose of this letter is to summarize the information discussed on the conference call and additional information that you may find helpful.

In your initial correspondence, you requested that EPA provide technical assistance to ensure that the appropriate regulatory and permitting requirements are followed. Earlier this year, in response to a Public Notice (File No. 08-52-0104) issued by the Michigan Department of Environmental Quality (MDEQ), the EPA Region 5 Water Division objected to the issuance of a permit for this project. In our objection, we expressed concerns that discharges from the lake into adjacent wetlands could have adverse impacts to existing emergent and scrub-shrub wetland communities. In addition, the U.S. Fish and Wildlife Service raised concerns regarding impacts that the proposed facility would have on fish and migratory birds. We incorporated those concerns into our objection by reference. EPA requested additional information for review in order to make a final determination of compliance with Clean Water Section 404(b)(1) requirements. Since that information was never submitted and the federal objection was not resolved in 90 days, the applicant will need to begin the application process once more. If you

would like a copy of our letter of objection, please contact Sue Elston, at (312) 886-6115 or elston.sue@epa.gov.

Your letter dated August 26, 2009, also references potential discharges to surface water and storm water runoff from the proposed new operations at the Humboldt Mill. Upon request of the KBIC, EPA Region 5 Water Division staff will review the permit application material submitted to the MDEQ under the Clean Water Act National Pollutant Discharge Elimination System to verify that all proposed discharges are regulated under appropriate permits and any proposed permits meet federal requirements.

It is our understanding that the proposed new operations at the Humboldt Mill will require a minor source air pollution permit from the MDEQ. Staff from EPA Region 5 Air and Radiation Division have already been in contact with the MDEQ and will be reviewing the draft permit to verify that it complies with Clean Air Act requirements. When EPA submits its comments to the MDEQ, we can also provide a copy to your staff.

As we communicated to your staff during the conference call on September 21, 2009, EPA has limited direct regulatory responsibilities for the proposed facility. The facility is regulated by the MDEQ through its authorities and certain approved delegations, authorizations and approvals under federal statutes. EPA retains an oversight responsibility for approved/authorized/delegated federal programs, and the Agency's actions, as described above, would be part of such federal oversight. There may be additional EPA regulatory involvement identified as more information concerning the proposed new operations at the Humboldt Mill is received by the Agency. We will notify the KBIC if EPA identifies other involvement and offer to further discuss our activities with the Tribe.

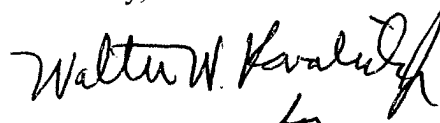
In regards to potential environmental contamination on the property from former operations, this site, according to our records, has not currently been identified for federal action. KBIC can petition EPA to perform a Preliminary Assessment (PA) in accordance with Section 105(d) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund. EPA funds the State of Michigan to perform such assessments on our behalf.

The purpose of the PA is to determine if a threat exists from past activity at the site and what further action should be taken. Historical information related to the Humboldt Mill, which may include some of the documents mentioned in your letter, would be reviewed as part of the Preliminary Assessment. However, this process would not generate specific comments to the Tribe on these technical documents. In addition, the PA would not relate to the current permitting process, but rather would be focused on past contamination. If a petition request is received, EPA would evaluate whether or not the Humboldt Mill is regulated pursuant to another authority, such as the Resource Conservation and Recovery Act or the equivalent Michigan law, then the Superfund Program would defer to that other regulatory program first. If it is not, then a PA could be performed. For more information on submitting a petition for a PA, please contact Pat Hamblin, at (312) 866-6312 or via email at hamblin.patrick@epa.gov.

EPA has another potential resource to the Tribe for assistance with review of technical documents related to addressing past contamination at the Humboldt Mill. Mining impacted sites are included in the federal definition of a Brownfield site under CERCLA. EPA provides assistance through the Technical Assistance to Brownfields Communities (TAB) program. EPA funds Kansas State University to help review and explain to an affected community the technical documents associated with the site. There is no charge to the Tribe for use of these services. A brochure is enclosed with this letter. KBIC may access this resource directly by contacting Dr. Sabine Martin, at smartinl@k-state.edu.

We understand that Tribes have concerns about potential impacts to natural resources from facilities such as this one that are located in Treaty-ceded territories. We would like to have further dialogue with you and other elected Tribal leaders to identify how best that federal agencies such as EPA and the Bureau of Indian Affairs can assist Tribes to work with state agencies as co-managers of these areas.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter W. Kavalich" or similar, written over the typed name.

Bharat Mathur *for*
Acting Regional Administrator

cc: Todd Warner, KBIC